IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

TOVREA PACKING COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Introduction

The identification of the case below, the basis for invoking the jurisdiction of this Court, and the necessary statements of fact are set forth in the foregoing petition.

Question Presented

The sole question presented by this petition is one of the proper interpretation of the term "agricultural laborer" as used in Section 2(3) of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A. Section 151 et seq.).

ARGUMENT

I. Persons employed by petitioner to feed livestock in feedlots adjacent to its packing plant are agricultural laborers within the meaning of Section 2(3) of the National Labor Relations Act.

There is no dispute anywhere in the record of this case over petitioner's contention that the feeding of livestock is an agricultural pursuit and that the work performed by those employed in the furtherance of that pursuit is agricultural in character. The sole question to be determined is whether the fact that the work is performed in feedlots adjacent to rather than removed from a commercial meat packing plant and the fact that the feeding of livestock is incidental to the operation of the plant in the sense that some of the livestock are slaughtered therein are facts which operate to render these laborers industrial rather than agricultural.

Precedents for judicial interpretation of the term "agricultural laborer" are confined almost exclusively to cases arising under the workmen's compensation statutes of the various states wherein it is a common practice to exclude agricultural laborers from coverage. The American Law Reports contain a series of exhaustive annotations covering these decisions. 7 A. L. R. 1296; 13 A. L. R. 955; 35 A. L. R. 208; 43 A. L. R. 954; 107 A. L. R. 977.

The courts have uniformly held that the character of the work considered in the light of the nature of the enterprise in which it is performed is the determining factor.

Melendez v. *Johns,* 76 Pac. (2d) 1163 (Ariz. 1938);
Ocean Accident & Guarantee Co. v. *Industrial Commission,* 256 Pac. 405 (Utah 1927);
Dowery v. *State,* 149 N. E. 922 (Ind. 1925);
Greischar v. *St. Mary's College,* 222 N. W. 525 (Minn. 1928);
Bates v. *Shaffer,* 185 N. W. 779 (Mich. 1921);

George v. *Industrial Accident Commission*, 174 Pac. 653 (Calif. 1918);
Shafer v. *Parke, Davis & Co.*, 159 N. W. 304 (Mich. 1916);
Vaughan's Seed Store v. *Simonini*, 114 N. E. 163 (Ill. 1916);
Keaney's Case, 104 N. E. 438 (Mass. 1914);
28 *Ruling Case Law* 718, Sec. 11;
71 *Corpus Juris* 376, Sec. 92.

It is respectfully submitted that there are no decisions supporting the proposition that geographical location of employment is an element to be considered.

The position adopted by the Circuit Court of Appeals in the instant case to the effect that the principal business of the employer is controlling has been specifically rejected on several occasions.

Ocean Accident & Guarantee Co. v. *Industrial Commission*, supra;
Dowery v. *State*, supra;
Greischar v. *St. Mary's College*, supra.

The Circuit Court of Appeals for the Ninth Circuit has itself held that under the National Labor Relations Act "the nature of the work modified by the custom of doing it determines whether the worker is or is not an agricultural laborer".

North Whittier Heights Citrus Association vs. *National Labor Relations Board*, 109 Fed. (2d) 76, 80 (cert. denied May 20, 1940, 84 L. Ed. 904).

It has not followed that decision in the instant case where on uncontroverted evidence it appears that the nature of the work is agricultural and there has been no modification by the custom of doing it.

II. The opinion below contains inadvertent misstatements of the record.

The opinion below is extremely misleading because of several inadvertent misstatements of the record. It is essential to a true understanding of the effect of the lower court's decision to refer to the actual facts. The lower court describes petitioner's meat packing business and livestock feeding business with reference solely to the packing plant and adjacent feedlots (R. 533-534). The court then states (R. 535):

> "Respondent is not only in the business just described but operates four cattle feeding ranches."

This statement would indicate that the feeding operations adjacent to the plant and the plant itself constitute a single enterprise while the ranch feed lots constitute a separate business. Such a conclusion is contrary to the facts in the record. The feedlots adjacent to the plant constitute one of five feeding units which altogether comprise petitioner's livestock feeding operations (R. 189).

With reference to the feeding operations on the ranches the lower court makes the following statement (R. 535):

> "A large portion of the cattle food consumed on each one of the ranches is grown thereon or in its vicinity."

If this statement has any significance at all it appears that in making it the lower court has overlooked the fact that a large portion of the feed consumed in the feedlots adjacent to the plant is from the same source and that the sources of the feed in all units of the livestock feeding operations are the same (R. 196 and 222).

The lower court states (R. 535) that "most of the stock fattened on the ranches is not marketed in any way through the packing plant." There is no evidence in the record to support such a statement. There is no evidence as to the

number of cattle fattened on the ranches. There is no direct evidence of the disposition made of the cattle fattened on the ranches. There is evidence, however, that one of the sources of the cattle slaughtered at the packing plant is the ranch feed lots (R. 188). There is also evidence that forty-nine per cent of the cattle processed at the packing plant are fattened in feedlots other than those adjacent to the plant (R. 233) and that fifty-four per cent of the cattle processed at the plant are fattened by petitioner (R. 189). Petitioner respectively submits that on this record it is logical to assume that a major portion of the cattle fattened on the ranches is processed at petitioner's packing plant.

In the same sentence (R. 535) the lower court also states "that most of the stock fattened in the feeding pens adjacent to the packing plant comes to it from sources other than the ranches to which reference has been made." This statement is true. Except for transfers of partially fattened cattle between the various units of respondent's feeding operations, all of the livestock placed in both the ranch feedlots and the feedlots adjacent to the packing plant are unfattened livestock obtained from the ranges of the Southwest (R. 193, 194 and 220).

The rationale of the lower court's opinion appears where reference is made to the unit of petitioner's livestock feeding operations adjacent to the packing plant and the court makes the following statement (R. 536-537):

> "But here we do not have stock raising or feeding as an incident to a stock ranch, nor do we have stock feeding or conditioning as a separate activity, but we do have stock ready for conditioning and fattening confined in relatively small corrals and fed intensively for short spaces of time as an incident to a meat slaughtering and packing industrial enterprise."

The lower court overlooks the fact that in no instance of livestock feeding as that pursuit is portrayed in the record is there such an operation conducted as a part of a business involving the breeding and raising of cattle prior to fatten-

ing for market. All of the witnesses who testified as inde pendent cattle feeders stated that they purchased the stoc for their feeding operations from the ranges of the South west. Petitioner does likewise. The lower court also over looked the fact that these same feeders sell a large portio of their fattened cattle to packers in Phoenix, Arizona, an although their operations might not be termed "an incide to" petitioner's packing plant, the existence of petitioner packing plant may well be the principal reason for the engaging in the livestock feeding business. Furthermor the lower court overlooks the fact that the feeding oper tions carried on by petitioner at its ranch feedlots a neither more nor less "incidental to" petitioner's "me slaughtering and packing industrial enterprise" than a the feeding operations carried on by petitioner at the fee lots adjacent to the plant. Finally, the lower court ina vertently misstates the entire record on this issue wh with reference to the feedlots adjacent to the plant it sa that "we do have stock ready for conditioning and fatte ing confined in relatively small corrals and fed intensive for short spaces of time." The record shows conclusive that the condition of the cattle, the size of the corrals, a the method, purpose and intensity of feeding are identi at the plant feedlots, at the ranch feedlots, and in every fe lot in Arizona.

III. Reasons for allowing the writ.

We have heretofore adverted to the fact that the te "agricultural laborer" had been the subject of judicial terpretation in a great many jurisdictions prior to the en ment of the National Labor Relations Act. It had acqui a definite legal meaning and it will be presumed that C gress in adopting the term understood that meaning intended to use the term in that sense.

Caminetti vs. *United States*, 242 U. S. 472, 27 S Ct. Rep. 192, 61 L. Ed. 442;

United States vs. *Merriam*, 263 U. S. 179, 44 Sup. Ct. Rep. 69, 68 L. Ed. 240;
H. Hackfield & Co. vs. *United States*, 197 U. S. 442, 25 Sup. Ct. Rep. 456, 49 L. Ed. 826.

The lower court in the instant case has adopted an interpretation of the term "agricultural laborer" which is contrary to that recognized legal meaning of the term in holding on the record in this case that the nine individuals involved are not agricultural laborers and that they are within the purview of the National Labor Relations Act (R. 537). The Circuit Court of Appeals has decided that under that Act a laborer who performs agricultural work in furtherance of an agricultural pursuit may, nevertheless, be deemed an industrial rather than an agricultural laborer solely by virtue of the geographical location of his employment or the nature of the principal business of his employer. The mere statement of this proposition indicates the great extent to which the jurisdiction of the National Labor Relations Board would be extended under such an interpretation.

Wherever agricultural work is performed in proximity to and as an incident to an industrial operation the Board's jurisdiction would extend to all those engaged in the performance of such work. It is a matter of common knowledge that throughout the nation it is a customary practice as a matter of convenience for packers of vegetable and citrus products to locate their plants in close proximity to the areas where those products are raised. The same is true of commercial cotton gins and, to a certain extent, of flour mills. There is no doubt that the employees working in such plants are industrial laborers.

North Whittier Heights Citrus Association vs. *National Labor Relations Board*, supra.

Now, however, under the interpretation made by the lower court in the instant case, in each such instance the laborers

engaged in cultivating the soil and raising the crops to be processed or packed in these adjacent plants would also be converted to the status of industrial workers. Their work, although clearly agricultural in character and performed in the pursuit of an agricultural enterprise, is incidental to the industrial operation of packing and processing in the same sense that the work of laborers in the feedlots adjacent to petitioner's packing plant is incidental to the operation of petitioner's plant, i. e., some or all of the products which they produce are packed or processed in the adjacent industrial plants.

Likewise, under the interpretation of the lower court in the instant case, all workers, regardless of the geographical location of their employment, engaged in the production of agricultural products which are used in an industrial operation conducted by their employer would be classified as industrial workers and as such be subject to the Board's jurisdiction. It is a matter of common knowledge that the Ford Motor Company, for example, is extensively engaged in the raising of soy beans which are used in its manufacturing process. Employees engaged in the raising of these soy beans for the Ford Motor Company are, under the lower court's interpretation of the term "agricultural laborers", industrial workers because their employer's principal business is the manufacturing of automobiles. It is also a well known fact that large industrial concerns engaged in the manufacture of rubber products own and operate extensive cotton plantations in the South and Southwest portions of the country. All of the cotton produced is used in their manufacturing process. The effect of the lower court decision in the instant case would be to bring the cotton pickers employed by these concerns under the jurisdiction of the National Labor Relations Board, even though cotton pickers working for other employers in adjoining fields would still be agricultural laborers and without the jurisdiction of the Board.

Additional examples of the universal effect of this interpretation of the term "agricultural laborer" would only serve to elaborate the obvious. If the lower court's interpretation is correct, petitioner estimates that thousands of workers who have heretofore been considered as agricultural and therefore exempt from the provisions of the National Labor Relations Act will be brought under the jurisdiction of the National Labor Relations Board. Petitioner respectfully submits that this raises an important question of federal law which has not been, but should be, settled by this Court.

Respectfully submitted,

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Attorney for TOVREA PACKING COMPANY,
Petitioner.